

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Barron's Outfitters Inc.,)	
)	
Plaintiff,)	
)	Case No. 3:14-cv-4335-TLW
vs.)	
)	ORDER
Big Hairy Dog Information Systems and)	
Retail Pro International LLC,)	
)	
Defendants.)	
_____)	

Plaintiff has filed a putative class action lawsuit asserting, among other things, that Defendants violated the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, by sending fax communications without including a compliant opt-out provision as required by 47 C.F.R. § 64.1200. (See ECF No. 1). Defendants request the action be stayed pending resolution of a petition for waiver filed with the Federal Communications Commission. (ECF No. 20). The Defendants also note a pending appeal before the United States Court of Appeals for the District of Columbia regarding whether the FCC has authority over solicited faxes. See Bais Yaakov of Spring Valley v. FCC, No. 14-01235 (D.C. Cir., May 19, 2015). Resolution of the waiver issue and of the D.C. Circuit appeal may impact the claims asserted in this case. Following briefing of the stay issue, the Court held a telephone hearing regarding the motion to stay on June 1, 2015. (ECF No. 27).

A decision to stay a proceeding rests within the district court's discretion. See Maryland v. Universal Elections, Inc., 729 F.3d 370, 379 (4th Cir. 2013). Many district courts have stayed cases similar to this to allow the FCC the opportunity to rule on pending waiver requests. See,

e.g., Physicians Healthsource, Inc. v. Anda, Inc., No. 12-60798 (S.D. Fla., May 23, 2014), ECF No. 105; Physicians Healthsource, Inc. v. Endo Pharmaceuticals, No. 14-2289 (E.D. Pa., January 16, 2015), ECF No. 27. The record reflects that rulings by the FCC and the D.C. Circuit Court may clarify matters raised before this Court. Judicial efficiency may be better served by imposing a stay while the FCC and D.C. Circuit Court consider these related issues. In reaching its decision, the Court has also considered the risk of inconsistent rulings that may result if the FCC and D.C. Circuit Court are not permitted to issue its ruling before this Court acts. Balancing the equities, the Court finds potential prejudice to the litigants if they are required to proceed without resolution of these issues.

The Plaintiff has raised the question of “spoliation of telephone records.” The Defendants are directed to preserve such evidence and are to alert pertinent third parties that they must preserve evidence pursuant to this Order while the case is stayed.

Accordingly, it is hereby **ORDERED** that the Defendant’s Motion to Stay (ECF No. 20) is **GRANTED** for a term of ninety days. The parties are directed to file a joint status report every ninety days while the stay is in place, which report the Court will use to consider extending the stay. The pending Motion to Certify Class (ECF No. 6) is **TERMINATED** with leave to refile once the stay is lifted.

IT IS SO ORDERED.

s/ Terry L. Wooten
Chief United States District Judge

June 19, 2015
Columbia, South Carolina